

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

H&R BLOCK TAX SERVICES LLC, Plaintiff, v. LUTGARDO ACEVEDO-LÓPEZ, Defendant.)))))))))))
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Case No. 4:12-cv-1320-FJG

**SUGGESTIONS OF PLAINTIFF H&R BLOCK TAX
SERVICES LLC IN OPPOSITION TO
DEFENDANT'S MOTION TO STAY
PROCEEDINGS**

On October 31, 2014, Defendant Lutgardo Acevedo-López (“Acevedo”) filed a Notice of Appeal (Dkt. 150) of the Judgment entered by the Court of October 1, 2014 (Dkt. 149) and a Motion Requesting Stay Due To Filing Of Notice Of Appeal (Dkt. 151). The only basis for the stay requested in Acevedo’s motion is that he had filed a Notice of Appeal. Dkt. 151 ¶ 4. Plaintiff H&R Block Tax Services LLC (“Block”) opposes Acevedo’s motion to stay.

The monetary portion of the Judgment entered by the Court against Acevedo exceeds \$1,870,000 plus interest. Dkt. 49. Under Fed. R. Civ. P. 62(d), Acevedo can obtain a stay of that portion of the Judgment by filing a supersedeas bond with the Court. He has not done so. Therefore, he is not entitled to a stay of proceedings by Block to execute on that Judgment.

Under Fed. R. Civ. P. 62(c), the Court may suspend the injunctive portion of its Judgment “on terms for bond or other terms that secure the opposing party’s rights.” The central right enforced by the injunctive portion of the Court’s Judgment is Block’s contractual right to be free for a period of time from unfair competition by “Acevedo and all persons in concert or participation with him” (Dkt. 149 at 2) using Block’s client information and goodwill. Acevedo has neither suggested any reason why it would be in the interests of justice to suspend that injunction (which was entered after a year and a half of litigation of the issues), nor has he indicated any willingness to post a bond or to agree to any other terms that would be likely to secure Block’s rights. Thus, there is no justification for a stay of the injunctive portion of the Court’s Judgment.

Moreover, a stay of the Court’s injunction is particularly unwarranted in light of the ongoing operation by members of Acevedo’s family of tax return preparation offices at the same locations at which Acevedo was enjoined from operating directly. Operating under the name Infinity Tax Advisors, those offices are using the same telephone numbers, are staffed by the same employees, and are soliciting the same clients as Acevedo’s previous tax offices at those locations. Indeed, the “*duces tecum* subpoenas” that Acevedo’s motion specifically seeks to have stayed¹ were served not on him, but on his surrogates, whose activities he is attempting to shield. In short, Block seeks the production of documents that it believes will show that Acevedo and the family members through whom he is continuing to operate prohibited tax return preparation offices are flagrantly violating the Court’s injunction. (A

¹ There has actually been only one subpoena *duces tecum* served; in addition copies of the Court’s injunction were delivered to each of Acevedo’s former locations now operating under the name Infinity Tax Advisors.

copy of the subpoena *duces tecum* served on Carolina Acevedo, Lutgardo Acevedo's sister and the apparent manager of Infinity Tax Advisors is attached as Exhibit 1 to this memorandum.)

For the reasons stated above, Acevedo's motion for a stay of proceedings pending appeal should be denied.²

Respectfully submitted,

Dated: November 4, 2014

/s/ David M. Kight

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Counsel for Plaintiff
H&R BLOCK TAX SERVICES LLC

² Block is aware that both Acevedo's counsel in Missouri and his counsel in Puerto Rico have moved for leave to withdraw from his representation in this case. Unless and until those motions are granted, Block's counsel will continue to serve Acevedo's counsel of record with Block's filings in this case.

CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing document was filed electronically with the above-captioned court with copies sent via e-mail system to the counsel below on November 4, 2014.

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Dated: November 4, 2014

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